Zain Azahari bin Zainal Abidin v Wearne Brothers (1983) Sdn Bhd

HIGH COURT (KUALA LUMPUR) — CIVIL APPEAL NO R2-11-65 OF 1997
AZMEL J
13 APRIL 2001

Contract *— Claim for work done — Claim exceeding quotation — Nature of quotation, whether binding as to price — Quotation to indicate estimated price of spare parts without including other charges — Whether extra charges could be claimed — Whether doctrine of estoppel could be invoked against claim for extra charges — Plaintiff accepted sum indicated in quotation, whether estopped from claiming extra charges*

The appellant/defendant was the owner of a Jaguar E-type saloon with registration number BJ 5959. He sent the car to the respondent/plaintiff for repairs of its engine. Before the repair works commenced, the appellant asked the respondent to quote prices of certain spare parts of the car which had to be replaced and ordered from the United Kingdom. On 12 February 1990, the respondent sent the price quotation of nine items of spare parts to the appellant and indicated that the prices were estimated prices. The total cost of the items were RM11,809.30. The letter did not include labour charges. On 14 February 1990, the appellant sent a faxed reply confirming that the respondent may go ahead to order the parts and repair the car. The respondent proceeded with the orders and the repairs. On 29 June 1991, the respondent issued an invoice in respect of the repair works which amounted to RM19,213.70. A sum of RM1,842.18 was discounted, making RM17,371.52 the sum payable. The appellant, through a letter dated 7 October 1991 said that the sum was monstrous but agreed to pay RM11,809.30, as this was the sum quoted in the letter of 12 February 1990. Despite several demands for payment issued by the respondent, the appellant still refused to pay the balance of RM5,562.22. The respondent commenced an action against the appellant and applied for summary judgment which was granted by the learned magistrate. The appellant appealed to the High Court. The question that the court had to determine was what the respondent's purpose was in issuing the letter dated 12 February 1990 and whether estoppel could be invoked against the respondent.

Held, dismissing the appellant's appeal with costs:

(1) The purpose of issuing the letter was simply to indicate to the appellant the estimated cost of the spare part items and seek his confirmation before the respondent could proceed to order the spare parts from the United Kingdom. The price quoted in the letter of 12 February 1990 was not the total price for the entire repair works. And such confirmation was subsequently given by the appellant in his reply letter (see p 232C–D).

(2) The respondent had adequately explained in their letter to the appellant dated 18 November 1992 as to why the bill came to

RM17,371.52. As explained by the respondent the extra charges were due to labour charges and costs of other small parts that were found to be necessary to be replaced. Furthermore, the prices quoted in the letter were estimated prices (see p 232G–H).

(3) The doctrine of estoppel could not be invoked against the respondent from claiming the amount exceeding the sum of RM11,809.30 because the purpose of issuing the letter of 12 February 1990 was purely to seek the appellant's confirmation before proceeding to place orders on the spare parts. It could not be regarded to be a quotation of the entire cost of the repairs. Not only were the prices quoted estimated but the labour charges had not been included in the letter (see pp 232H–233A).

(4) The contention that the doctrine of estoppel could be invoked against the respondent for accepting the amount of RM11,809.30 thereby the respondent be estopped from claiming any additional amount had no merit. There was no indication by the respondent whatsoever that they regarded the payment of RM11,809.30 as full and final settlement of the costs of repairs. Merely by accepting the payment of RM11,809.30 without other actions, the respondent could not come within the meaning of estoppel. On the other hand, the respondent had explained quite clearly why the amount exceeded RM11,809.30. The reply letter may have been slightly delayed for which the respondent had apologized. But that did not mean that the respondent had consented to a lesser amount. Nor was the demand time barred. Subsequent to that, there were several other requests for the payment of the balance sum (see p 233A–C).

[Bahasa Malaysia summary

Perayu/defendan adalah pemilik sebuah kereta Jaguar jenis E saloon dengan nombor pendaftaran BJ 5959. Beliau telah menghantar kereta tersebut kepada respondent/plaintif untuk membaiki enjinnya. Sebelum kerja-kerja pembaikan dimulakan, perayu telah bertanyakan kepada responden untuk menyebutkan bahagian-bahagian ganti tertentu kereta tersebut yang perlu digantikan, yang telah dipesan daripada United Kingdom. Pada 12 Februari 1990, responden telah menghantarkan sebut harga sembilan barangan bahagian ganti kepada perayu dan menyatakan harga-harga tersebut adalah harga-harga anggaran. Kos keseluruhan barangan tersebut adalah RM11,809.30. Surat tersebut tidak termasuk caj buruh. Pada 14 Februari 1990, perayu telah menghantar jawapan melalui faks mengesahkan bahawa responden boleh meneruskan pesanan bahagian-bahagian tersebut dan membaiki kereta tersebut. Responden telah membuat pesanan dan pembaikan tersebut. Pada 29 Jun 1991, responden telah mengeluarkan satu invois berhubung kerja-kerja pembaikan yang berjumlah RM19,213.70. Sejumlah RM1,842.18 telah diberi potongan, menjadikan RM17,371.52 jumlah yang perlu dibayar.

Perayu, melalui sepucuk surat bertarikh 7 Oktober 1991 mengatakan bahawa jumlah tersebut adalah sangat besar tetapi bersetuju untuk membayar RM11,809.30, kerana jumlah ini telah disebut dalam surat 12 Februari 1990. Walaupun beberapa tuntutan untuk pembayaran telah dikeluarkan oleh responden, perayu masih enggan untuk membayar baki RM5,562.22. Responden telah memulakan tindakan terhadap perayu dan memohon penghakiman terus yang telah dibenarkan oleh majistret yang arif. Perayu telah membuat rayuan kepada Mahkamah Tinggi. Persoalan yang mahkamah perlu tentukan adalah apakah tujuan responden dalam mengeluarkan surat bertarikh 12 February 1990 dan sama ada estopel boleh digunakan terhadap responden.

Diputuskan, menolak rayuan perayu dengan kos:

(1) Tujuan mengeluarkan surat tersebut hanya untuk menunjukkan kepada perayu anggaran kos untuk barangan bahagian ganti dan memohon pengesahan beliau sebelum responden meneruskan pesanan bahagian ganti tersebut daripada United Kingdom. Harga yang disebut dalam surat 12 Februari 1990 bukan harga keseluruhan yang disebutkan oleh responden untuk keseluruhan kerja-kerja pembaikan. Dan pengesahan tersebut telahpun diberi oleh perayu di dalam surat balasannya (lihat ms 232C–D).

(2) Responden telah menerangkan dengan secukupnya di dalam surat kepada perayu yang bertarikh 18 November 1992 kenapa bil berjumlah sebanyak RM17,371.52. Seperti yang diterangkan oleh responden, bayaran tambahan telah dikenakan kerana bayaran kerja dan kos bahagian-bahagian yang kecil yang perlu digantikan. Lagipun, harga-harga yang disebutkan di dalam surat merupakan harga anggaran (lihat ms 232G–H).

(3) Doktrin estopel tidak boleh digunakan terhadap responden untuk menuntut jumlah yang melebihi RM11,809.30 kerana tujuan surat 12 Februari 1990 dikeluarkan adalah semata-mata untuk mendapatkan pengesahan perayu sebelum membuat tempahan untuk bahagian ganti. Ia tidak boleh diambil sebagai harga sebutan kos seluruh kerja pembaikan. Bukan sahaja harga yang disebut adalah anggaran, tetapi harga kerja tidak disertakan di dalam surat tersebut (lihat ms 232H–233A).

(4) Perbalahan bahawa doktrin estopel boleh digunakan terhadap responden kerana responden telah menerima RM11,809.30 and oleh itu responden diestop daripada menuntut jumlah yang tertunggak adalah tidak bermerit. Tiada apa-apa yang menunjukkan bahawa responden menerima bayaran RM11,809.30 sebagai bayaran penuh dan muktamad kos kerja pembaikan. Responden tidak diestopkan hanya kerana menerima RM11,809.30 tanpa melakukan apa-apa yang lain. Responden telah menerangkan sebab mengapa jumlah tersebut melebihi RM11,809.30. Surat balasan tersebut walaupun terlewat tetapi

responden telah meminta maaf di atas kelewatan tersebut. Akan tetapi, ini tidak bermakna bahawa responden telah bersetuju untuk menerima bayaran yang kurang. Tuntutan tersebut juga tidak dihalang oleh had masa. Lagipun selepas itu, terdapat beberapa tuntutan untuk bayaran jumlah yang tertangguk (lihat ms 233A–C).

[Editorial Note: Leave to appeal to the Court of Appeal was granted on 15 February 2001.]

Notes

For a case on claim for work done, see 3(2) *Mallal's Digest* (4th Ed, 2001 Reissue) para 2272.

Legislation referred to

Subordinate Courts Rules 1980 O 26A

Appeal from: Summons No 72–27520 of 1993 (Magistrate's Court, Kuala Lumpur)

Tuan Hj Sulaiman bin Abdullah (*Shobini Mahendra* with him) (*Zain & Co*) for the appellant.

SH Chooi (*Chooi See Hong & Co*) for the respondent.

Azmel J: The appellant/defendant, owner of a Jaguar E-type saloon with registration number BJ 5959, had sent the car to the respondent/plaintiff for repairs of its engine. However, before the repair works commenced the appellant had asked the respondent to quote prices of certain spare parts of the car which had to be replaced. The spare parts had to be specially ordered from the United Kingdom since parts of that model of car were not available locally. On 12 February 1990, the respondent sent the price quotation of nine items of spare parts to the applicant. In the letter, the respondent indicated that the prices quoted were estimated prices. For the last item, cylinder liners, the quoted price as RM960 was inclusive of installation and honing. The total costs of the items as quoted in the said letter was RM11,809.30. That letter did not include labour charges. In the last paragraph of the letter, the respondent said:

> We will await your confirmation before we proceed for the parts order.

On 14 February 1990, the appellant sent his faxed reply to the respondent. The last paragraph of his letter said:

> I hereby confirm that you may go ahead to order the parts and do the necessary repairs to the above car.

After receiving the confirmation from the appellant, the respondent proceeded with the order of the spare parts and carried out the repair works. It involved mainly the overhauling of the car engine. On 29 June 1991, the respondent issued an invoice in respect of the repairs which amounted to RM19,213.70 (exh A, p 15 of appeal records). However, a sum of

RM1,842.18 was discounted making the nett amount payable by the appellant at RM17,371.52. By a letter dated 7 October 1991, the appellant told the respondent that the amount stated in the bill was monstrous. The appellant, however, agreed to pay the sum of RM11,809.30 to the respondent, but refused to pay the balance of RM5,562.22 as that was the sum quoted in the letter of 12 February 1990. Despite several demands for payment issued by the respondent, the appellant still refused to pay the balance sum of RM5,562.22. As such the respondent commenced action for recovery of the said sum in the magistrate's court.

The respondent/plaintiff applied for a summary judgment under O 26A of the Subordinate Courts Rules 1980 ('SCR'). The learned magistrate, after having heard arguments from both counsels, granted the application. Being dissatisfied with the decision of the learned magistrate, the appellant filed an appeal to the High Court. As the amount of claim was only RM5,562.22, leave to appeal to the High Court had to be obtained. Leave to appeal was granted by the High Court since the appellant had successfully convinced the learned judge that there were legal issues that needed to be considered in the appeal.

The appeal was heard before me on 14 October 1997. After having heard submissions from counsels from both parties, I arrived at the conclusion that the learned magistrate was correct in arriving at the decision to grant the application for summary judgment. As such, I dismissed the appeal with costs. Being dissatisfied with my decision, the appellant now appealed to Court of Appeal, who quite recently had granted leave to appeal.

In my view, the whole crux of this case centred mainly with the content of the letter dated 12 February 1990 which contained the quotation of the price of the spare parts required for the repair works. The letter states as follows:

Date: 12 February 1990
To: En Zain Azhari Zain & Co
Fax No: 2986969
From: Hassan Abu Bakar

Dear Sir,

Re: Jag E-Type BJ 5959 Repairs

We refer to the above car which is undergoing repairs to the engines here. We have contacted our principals who had put the suppliers to give us a quote and below are the estimated prices (all available).

(1)	6 pcs piston c/w rings std size	6,409.00
(2)	1 set main bearings 0.020 undersize	1,373.00
(3)	Engine gasket set	936.00
(4)	Top engine gasket sel	621.00

(5)	Oil pump	593.00
(6)	Inlet valve guides	414.00
(7)	Exhaust valve guider	414.00
(8)	Oil filter element	89.30

The original cylinder liners we have requested are not available so we are quoting an alternative set which is $960 inclusive of installation and honing.

We will await your confirmation before we proceed with the parts order.

Thank you.

Regards

(Signed)
Hassan Abu Bakar

The total price of the items quoted was RM11,809.30. The prices for items 1 to 8 were estimated prices.

The short reply by the appellant, two days later, reads as follows:

To:	Wearne Brothers (1983) Sdn Bhd	Date: 14 February 1990
Attn:	En Hassan Abu Bakar	Facsimile Transmission
From:	Zain Azahari	No of Pages:
Re:	Jaguar E-Type BJ 5959	

Dear Sir,

I have your fax of the 12 February 1990 in respect of the above.

I hereby confirm that you may go ahead to order the parts and do the necessary repairs to the above car.

Thank you.

Yours faithfully

(Signed)
Zain Azahari

The question that I have to determine was what the respondent's purpose was in issuing the letter dated 12 February 1990 to the appellant. I found it to be a very simple letter using very simple words. In my view, there were no doubts whatsoever as to the purpose of issuing the letter. Without the need to boggle the mind, I concluded that its purpose was simply to indicate to the appellant the estimated price of the major spare parts required to be purchased in order to do the repairs to the car engine. I was therefore unable to agree with the contention of the appellant that the letter of 12 February 1990 was the total price quoted by the respondent for the entire repair works. As admitted by the appellant in his affidavit, the car was a 1963 model. Because the car was an old model, most of the spare parts were no longer available locally. They had to be specially ordered from the United Kingdom. And the repair works were in respect of the car engine. The items

as mentioned in the said letter were all pertaining to the engine spare parts. What is important to note in the letter are the last paragraphs which states: A

> We will await your confirmation before we proceed with parts order.

And the appellant's reply to it:

> I hereby confirm that you may go ahead to order the parts and do the necessary repairs to the above car. B

In addition to that, it is common knowledge that servicing of Jaguar engines has to be done by specialists. And the respondent is one of them. It cannot be done by any workshop by the roadside. Due to that, the service charges are generally more expensive. As such, not everybody can afford to own a Jaguar car. C

After having considered all the circumstances, I was quite convinced that the letter dated 12 February 1990 was issued to indicate to the appellant the estimated cost of the spare part items and seek his confirmation before the respondent could proceed to order the spare parts from the United Kingdom. And such, confirmation was subsequently given by the appellant in his reply letter. D

It must be borne in mind that the car was sent to the respondent's workshop for engine repairs. In other words, overhauling of the car engine had to be done. Needless to say, such overhauling would certainly require substantial labour works. It would be very surprising if the appellant, who owned many cars including four Daimlers, did not know that for overhauling of car engines by any car repair workshop, the respondent included, labour charges would normally be imposed. Nobody would expect such works to be free of charge. I am also attracted to the last phrase of the appellant's reply: E

> ... and do the necessary repairs to the above car. F

Such a phrase can be construed to mean giving the respondent to do whatever they deemed necessary to cause whatever works to the said car in order to make it roadworthy to the satisfaction of the respondent. As a matter of fact, the respondent carried out the repair works to the said car. There did not appear to be any complaint in so far as the works were concerned. The only complaint by the appellant was only in respect of the quantum of the charges which had exceeded the sum of RM11,809.30. In my view, the respondent had adequately explained in their letter to the appellant dated 18 November 1992 as to why the bill came to RM17,371.52. As explained by the respondent, the extra charges were due to labour charges and costs of other small parts that were found necessary to be replaced. Furthermore, the prices quoted in the said letter were estimated prices. G H

On the issue whether the doctrine of estoppel could be invoked against the respondent from claiming the amount exceeding the sum of RM11,809.30, I am of the view that it cannot be applied here because as I have explained above the purpose of issuing the letter of 12 February 1990 was purely to seek the appellant's confirmation before proceeding to place I

orders on the spare parts. It cannot be regarded to be a quotation of the entire cost of the repairs. Not only were the prices quoted estimated, but the labour charges had not been included in the said letter.

In respect of the appellant's allegation that the doctrine of estoppel could be invoked against the respondent for accepting the amount of RM11,809.30, thereby the respondent be estopped from claiming any additional amount, I am of the view that this contention had no merit. There is no indication by the respondent whatsoever that they regarded the payment of RM11,809.30 as full and final settlement of the costs of repairs. Merely by accepting the payment of RM11,809.30 without other actions, the respondent cannot come within the meaning of estoppel. On the other hand, the respondent had explained quite clearly why the amount exceeded RM11,809.30. The reply letter may have been slightly delayed for which the respondent had apologized. But that does not mean that the respondent had consented to a lesser amount. Nor was the demand time barred. Subsequent to that, there were several other requests for the payment of the balance sum. Therefore, taking into consideration the whole circumstances of this case, I was unable to agree with the appellant that the doctrine of estoppel could be invoked against the respondent.

For the reasons as stated above, I arrived at the conclusion that the learned magistrate was correct in allowing the plaintiff's/respondent's application for a summary judgment under O 26A of the SCR. I therefore dismissed the appellant's appeal with costs.

Appellant's appeal dismissed with costs.

Reported by Chew Phye Aun